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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,841	09/30/2002	Susanne Brakmann	B1180/20005	5272

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EXAMINER

HANDY, DWAYNE K

ART UNIT PAPER NUMBER

1743

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/089,841

Applicant(s)

BRAKMANN ET AL.

Examiner

Dwayne K. Handy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-24 and 27-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-24 and 27-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Inventorship***

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 17-20, 22-24 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters (4,299,920) in view of Elkins (4,441,793).

Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peters (4,299,920) in view of Elkins (4,441,793) and further in view of Muramatsu et al. (6,645,434).

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters (4,299,920) in view of Elkins (4,441,793).

**These rejections were described in the previous Office Action (mailed 1/4/06). They remain in effect. Please see Response to Arguments below.**

#### ***Response to Arguments***

4. Applicant's arguments filed 5/4/06 have been fully considered but they are not persuasive. Applicant has argued that the combination of the Peters and Elkins references do not teach the features of claim 17 including the removable cover layer (page 4, line 20) and automatic adhesion of the cover to the wall (page 5, line 1). The Examiner respectfully disagrees. Peters teaches that the base plate (3) may be readily separated from the wall (1) section (col. 3, lines 50-52). Peters also teaches that the base plate may be made of polystyrene. Elkins teaches that layers of their device be made of polystyrene (column 2, line 40). Therefore, the polystyrene cover would adhere to the wall section (1) in the same manner that the wall section adheres to the base plate (3). This would yield a device having a base, a flexible compartment layer

adapted to removably and automatically adhere to the base such that it can be separated, and a cover with penetration openings mountable by automatic adhesion on the compartment layer. This is what claim 17 recites.

5. Applicant has also argued that one of ordinary skill in the art would not combine the openings from the cover of Elkins with the device of Peters as suggested by the Examiner. One would not be inclined to combine the two since one could not add and remove reactants through the openings as argued by the Examiner. The Examiner disagrees. One could add or remove reactants through the opening by using a probe such as a needle to add or withdraw fluids.

6. Applicant has amended claim 21 to include the limitation "of the cover glass". Applicant then argues that Muramatsu does not teach a cover glass with openings having this thickness. Applicant appears to be arguing that the cover layer of the instant device must now be about 150um. This is beyond the scope of the claim as currently written. Claim 21 refers to "the cover glass". Claims 17-19 do not recite a "cover glass". Claim 17 recites that the device has a base that may be comprised of glass and a "cover" – but not a "cover glass". Therefore, claim 21 lacks antecedent basis if referring only to these claims. If taken to modify the limitations of claim 20, however, the claim does not lack antecedent basis. The limitation of claim 20 is drawn to a glass plate that is the base. In summary, taking all the limitations of claim 21 into account, the "cover glass" in claim 21 limits the glass plate of claim 20 – which is the base of the

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instant device, NOT the cover from instant claim 17. So claim 21 simply requires that the base be about 150um. This is what Muramatsu teaches.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K. Handy whose telephone number is (571)-272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DKH  
September 4, 2006

  
Bill Warden  
Supervisory Patent Examiner  
Technology Center 1700